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**OFFICE OF PETITIONS**

In re Application of :  
McClain et al. :  
Application No. 10/091,767 :  
Filed: March 5, 2002 :  
Attorney Docket No. F1101 :  
:

ON PETITION

This is a decision on the petition filed April 17, 2002, to accord the above-identified application a filing date of March 5, 2002, instead of March 7, 2002.

The petition is **granted**.

37 CFR 1.10(d) states:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and
- (3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

All of the above requirements have been met. Therefore, the application will be accorded a filing date of March 5, 2002.

A petition fee of \$130 was charged to petitioner's deposit account upon receipt of the petition. However, a petition seeking relief under 37 CFR 1.10 is free. Therefore, the \$130 fee will be credited back to petitioner's deposit account.

The file is now being forwarded to the Office of Initial Patent Examination to accord the application a filing date of March 5, 2002.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.



Charles Steven Brantley  
Petitions Attorney  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy